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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,785

11/21/2003

Edward Paul Carlin

9432

2937

27752

7590

05/22/2008

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EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

05/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/719,785

Applicant(s)

CARLIN, EDWARD PAUL

Examiner

MELANIE J. HAND

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1 and 4-11 have been considered but are moot in view of the new ground(s) of rejection.
2. The double patenting rejection of claims 1 and 4-11 is withdrawn in view of the amendment to the claims, rendering claims 1 and 4-11 nonobvious over claims 1-9 of U.S. Patent No. 7,070,585.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 4-8, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Jensen (U.S. Patent No. 7,087,045).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the

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inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With respect to **claim 1**: Jensen teaches a tampon 20 for feminine hygiene comprising an insertion end 24, a withdrawal end 26, a longitudinal axis L, and an outer surface 22. (Col. 4, lines 37-49) The tampon 20 is comprised of compressed fibrous material (Col. 4, lines 7-9, Col. 6, lines 24-26) wherein said outer surface 22 of said tampon comprises a plurality of recessed portions 23. (Col. 4, lines 49-51) Each of said recessed portions 23 has a width dimension x or y, wherein the width dimension varies intermittently between x and y as measured along the longitudinal axis L of the tampon. (Fig. 1, Col. 6, lines 2-13) Each of said recessed portions 23 comprises at the insertion end 24 of the tampon a first width dimension x and a second width dimension y, wherein said first width dimension x is greater than said second width dimension y. (Fig. 1, Col. 6, lines 8-13) Each of said recessed portions 23 comprises at the withdrawal end 26 of the tampon a first width dimension xl and a second width dimension yl that constitutes a second set of width dimensions x and y as taught by Jensen. (Col. 6, lines 2-5)

With respect to **claim 4**: The recessed portions 23 are arranged in a pattern. (Col. 5, lines 15,16)

With respect to **claim 5**: The recessed portions 23 are parallel with said longitudinal axis. (Col. 4, lines 50, 51)

With respect to **claim 6**: The recessed portions 23 are spirally shaped inasmuch as they are defined by adjacent spiraling ribs on the outer surface 22 of the tampon 20. (Col. 3, lines 25-27)

With respect to **claim 7**: The fibrous material of said tampon 20 has an essentially uniform density over a cross-section of the tampon at the portion of the tampon nearest the insertion end wherein the recessed portions are not present. (Fig. 1, Col. 6, lines 24-26)

With respect to **claim 8**: Jensen teaches a tampon 20 wherein the fibrous material of said tampon has varying density over a cross-section of the tampon, specifically a cross section in which the recessed portions are present, as such portions create areas of higher density directly adjacent the bottom-most points of said portions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen ('045).

With respect to **claim 9**: Jensen teaches an alternate embodiment of the tampon 20 that further comprises a core which is highly compressed. Therefore, Jensen does not explicitly teach a single embodiment that meets all of the limitations of claim 9. However, since it is known to one of ordinary skill in the art to form recessed portions in processes which involve compressing the material, e.g. embossing, it would be obvious to one of ordinary skill in the art to modify the article of Jensen such that the recessed portions are formed by compressing the core to form said recessed portions with a reasonable expectation of success.

With respect to **claim 10**: The withdrawal end 26 further comprises a withdrawal member 82.
(Col. 7, lines 51, 52)

With respect to **claim 11**: The withdrawal end further comprises a finger indent 80. (Col. 7, line 67 – Col. 8, line 1)

Terminal Disclaimer

5. The terminal disclaimer filed on September 5, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 7,087,045 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761